PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number: 20423-07776

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on January 18, 2008

Signature /Jie Zhang/

Typed or printed name: Jie Zhang

Application Number	Filed
10/632,857	July 31, 2003

First Named Inventor: Carey Nachenberg

Art Unit	Examiner
2134	Piotr Poltorak

This request is being filed with a notice of appeal.

I am the

- ☐ applicant/inventor. — /Jie Zhang/ (Signature)
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. — Jie Zhang (Typed or printed name)
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- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ — January 18, 2008 (Date)

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 of 1 form is submitted.

ATTACHMENT TO THE PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pre-appeal review is requested because the rejections in the September 25, 2007 Final Office Action (hereinafter "the Office Action") are clearly improper and without any factual or legal basis. Appellant respectfully requests that the Panel withdraw the basis for the rejections to claims 1-32 and allow these claims.

I. Status of the Claims

Claims 1-32 are pending and stand rejected. Claims 1-32 are rejected under 35 USC § 103(a) as allegedly being obvious over U.S. Patent No. 7,120,933 to Mattsson ("Mattsson").

II. Rejection of independent claims 1, 31, and 32 in view of Mattsson

The claimed invention is a way to protect computer code, such as a database, from malicious retrievers. For example, the computer code can be a database and the malicious retriever can be a person that is attempting to extract confidential information from the database. The claimed invention trains itself by observing a plurality of retrieval commands and their responses, deriving retrieval information from the observed retrieval commands and responses, and converting the derived retrieval information into one or more rules for determining whether retrieval commands are acceptable. The system then generates retrieval information for a retrieval command, and inputs the retrieval information to the rule to determine whether the retrieval command is acceptable.

Specifically, independent claim 1 as filed recites, inter alia, the following:

> deriving from the plurality of retrieval commands and the responses a set of retrieval information, the set of retrieval information comprising input vectors characterizing the plurality of retrieval commands;
>
> converting the set of retrieval information into at least one rule for determining whether retrieval commands are acceptable;
>
> generating retrieval information characteristic of data sent to a retriever by the

computer code in response to a retrieval command issued by the retriever, the retrieval information comprising an input vector characterizing the retrieval command;

determining whether the retrieval command is acceptable using at least some of the retrieval information as an input to the at least one rule;

....

Independent claims 31 and 32 recite similar features. Converting retrieval information derived from observed retrieval commands and their responses into security rules, and using the security rules to determine whether subsequent retrieval commands are acceptable is advantageous because it enables automated rule discovery.

Mattsson does not disclose all the limitations of claim 1. Mattsson discloses a method for detecting intrusion in a database from an authorized user by comparing an access rate of sensitive data retrieved by the user with permissible access rates defined in security policies. See Mattsson, Summary, col. 3, lines 51-57, and col. 4, lines 35-59. The Examiner acknowledged that Mattsson fails to disclose the limitations related to converting retrieval information into at least one rule (limitations 1-4 of claim 1). See Office Action, para. 6. However, as set forth below, the Examiner erroneously asserted that these limitations are inherent or obvious to one of ordinary skill in the art at the time of Appellant's invention. See Office Action, para. 6.

At the onset, it is apparent that the Examiner is interpreting the first four limitations of Appellant's claim to cover internal operations of a software program. For example, the Examiner introduces the rejection starting at paragraph 7 by stating "It is clear that Mattsson's invention is implemented using a computer code and computer code operates based on various trigger mechanisms, e.g., procedures calls, interrupts etc." Assuming for the sake of argument that the Examiner's interpretation of the claims is correct, it is neither inherent nor obvious to convert retrieval information into a rule as Appellant claims.

The Examiner's basis for rejecting this element is contained in paragraph 7 of the Office Action and essentially boils down to saying that sending a message indicating that a command is not acceptable "is a clear indication that the set of retrieval information had to be converted into at least on rule for determining whether retrieval commands are acceptable." See Office Action, para. 7, sentence 4. Appellant respectfully submits that the determination of whether a retrieval command is acceptable only indicates that information related to the retrieval command may be used to ***apply*** certain security rules to make the determination, but not that retrieval information are ***converted*** into such rules. The determination does not render converting retrieval information into rules necessary. The rules can be provided by other sources. Mattsson neither teaches nor suggest that a set of retrieval information are converted into at least one rule as claimed, and, as such, there is no reason why a person of ordinary skill in the art would find Appellant's claimed invention obvious.

The Examiner also asserted that the limitations related to converting retrieval information into at least one rule "read on a test stage of configuring a system to act in a particular way." See Office Action, para. 8, sentence 1. Testing a system validates the system based on a set of existing rules, and does not necessarily convert retrieval information into security rules for determining whether retrieval commands are acceptable. For example, one may subject a device to a set of inputs and compares its outputs to a set of predetermined outputs to determine whether the device acts in a particular way. This test does not involve converting retrieval information into security rules for determining whether retrieval commands are acceptable. Therefore, the Examiner's lengthy description of a test stage does not support the rejection of the claims.

Accordingly, Appellant respectfully submits that a person of ordinary skill in the art would not find the elements of independent claims 1, 31, and 32 obvious in view of Mattsson.

III. Rejection of independent claim 15 in view of Mattsson

Claim 15 depends from claim 1 and recites that deriving a set of retrieval information further comprises "deriving from the plurality of retrieval commands and the responses a set of retrieval information based on a set of preselected set of parameters." The Examiner lumped the rejection of claim 15 together with the rejection of claims 1, 13, 31, and 32, but never discussed, or even mentioned, the limitations recited in claim 15. See Office Action, paragraphs 5-8. For example, the Examiner never discussed the claimed limitation of "a set of preselected set of parameters."

The Examiner "bears the initial burden of factually supporting any prima facie conclusion of obviousness." See MPEP 2142. In order to establish a prima facie case of obviousness, "the prior art reference (or references when combined) must teach or suggest all the claim limitations." See MPEP 2142. By not providing any ground for why limitations of claim 15 are obvious, the Examiner failed to fulfill his initial burden as set forth above. Therefore, Appellant respectfully submits that the rejection of claim 15 is improper and requests its withdrawal.

IV. Summary

Based on the foregoing, Appellant respectfully submits that each of the pending rejections suffers from at least the deficiencies noted above. Accordingly, Appellant requests withdrawal of the basis for the rejections of independent claims 1, 31, and 32 and their dependent claims, and requests allowance of these claims.

Respectfully Submitted,
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